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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,946	11/03/2003	Bruce M. Campbell	1440-9	4355
7590 08/18/2004				
Galgano & Burke Suite 35 300 Rabro Drive Hauppauge, NY 11788			EXAMINER PRICE, CARL D	
			ART UNIT 3749	PAPER NUMBER

DATE MAILED: 08/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/699,946

Applicant(s)

CAMPBELL, BRUCE M.

Examiner

CARL D. PRICE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07/21/2004 (PRELIMINARY AMENDMENT).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07/21/2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION**Response to Preliminary Amendment**

The amendment filed 07/21/2004 is objected to under 35 U.S.C. 132 because it introduces. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The cross hatching for elements 12, 20 (figure 1); 112, 120 (Figure 4); 212, 220 (Figure 7); and 312, 320 (Figure 10) constitute new matter since these portions of the invention are now illustrated in a manner that is detailed than that originally filed.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16: rejected under 35 U.S.C. 103(a)

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being obvious over JP '202 (JP 07-253202) in view of WESTON (US 1856676) or O'ROURKE (US 5711254).

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In regard to claims 1-16, the recitation "candle wick" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

In regard to claims 1-16, the recitation(s), such as, "said code also indicates the manufacturer of said wick" and "said characteristics are selected from the group consisting of wick type, yield, rate of combustion, flame height, and pool diameter" are deemed statements of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

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JP '202 discloses a candle wick, comprising:

- an outer surface (13) and an inner region (11) made of combustible materials suitable for use in the manufacture of a candle.

JP '202 discloses the invention substantially as set forth in the claims with possible exception to the outer surface being substantially monochromatic, and the inner region including at least one colored identification filament that is not visible on the outer surface of the candle wick.

For the purpose of providing identification means, each WESTON (US 1856676) (see page 1, lines 65-95) and O'ROURKE (US 5711254) (see Figures 2-4; column 4, lines 34-43) teach, from the same elongated flexible article field of endeavor as JP '202, forming articles such as flexible cables and rope members with outer surfaces being substantially monochromatic, and inner regions including at least one colored identification filament which is not visible on the outer surface of the candle wick.

In regard to claims 1-16, for the purpose of providing means for readily identifying certain characteristics of the JP '202 candle wick, it would have been obvious to a person having ordinary skill in the art to modify the inner region of JP '202 to include one, or multiple, colored filaments visible only at the ends of the core to provide a color coding indication of characteristics of the article, in view of the teaching of WESTON (US 1856676) or O'ROURKE (US 5711254).

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Conclusion

See the attached PTO FORM 892 for prior art made of record and not relied upon and which are considered pertinent to applicant's disclosure.

In particular, applicant's attention is directed to:

Tsai (US 20020088639A1), see elements 3.

Borisof (US4273537), see figure 18; column 10, lines 44-49.

Tucker (US 2272229), see elements 14, 16, 18, 21.

Porteous (US 4321038), see column 3, lines 29-32.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **CARL D. PRICE** whose telephone number is **703-308-1953**. The examiner can normally be reached on Monday through Friday between **6:30am-3:00pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on **703-308-1935**. The fax phone number for the organization where this application or proceeding is assigned is **703-872-9306**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the **Electronic Business Center (EBC)** at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Carl D. Price', with a stylized flourish at the end.

CARL D. PRICE
Primary Examiner
Art Unit 3749

cp